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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JASON HOFELICH,

Plaintiff,

- against -

Superintendent ROBERT ERCOLE, et al.,  
Defendants.

06 Civ. 13697 (PKC) (DFE)  
This is not an ECF case  
MEMORANDUM AND ORDER

-----X  
JASON HOFELICH,

Plaintiff,

- against -

Superintendent ROBERT ERCOLE, et al.,  
Defendants.

07 Civ. 08059 (PKC) (DFE)  
This is not an ECF case  
MEMORANDUM AND ORDER

-----X  
JASON HOFELICH,

Plaintiff,

- against -

Superintendent ROBERT ERCOLE, et al.,  
Defendants.

08 Civ. 02193 (PKC) (DFE)  
This is not an ECF case  
MEMORANDUM AND ORDER

-----X  
DOUGLAS F. EATON, United States Magistrate Judge.

These three cases are consolidated for discovery purposes,  
as I stated in my Memorandum and Order dated January 29, 2008.

On April 3, 2008, I held a telephone conference with Mr. Hofelich and AAG Dawkins. I noted that Judge Castel had forwarded to me the March 20, 2008 letter in which Mr. Hofelich requested Judge Castel to hold a telephone conference to discuss resolution of these cases. I explained that Judge Castel has a dismissal motion pending before him in 07 Civ. 08059, and therefore I rather than he would be the appropriate judge to engage in any settlement discussions.

During the April 8 telephone conference, Mr. Hofelich did make a proposal to settle all of his cases except 08 Civ. 02193. His proposal would include his case before Judge Swain and his case in the Western District. AAG Dawkins will discuss the proposal with the Department of Correctional Services, and will respond directly to Mr. Hofelich. I continued to encourage

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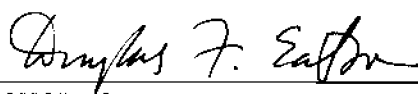
settlement negotiations, but I emphasized that it was necessary to set firm deadlines even if settlement negotiations were occurring.

Mr. Hofelich acknowledged that he received AAG Dawkins's 1/31/08 motion papers in 07 Civ. 08059. He explained that he has not been able to get into the law library, and has been having problems with certain officers at Elmira Correctional Facility. (On the other hand, he expressed appreciation that Elmira has approved him for its Family Reunion program.) I told him that, regardless of whether he is able to get into the law library, I am setting a firm deadline of **April 25, 2008** in 07 Civ. 08059, for Mr. Hofelich to mail a response to Judge Castel (with a copy to AAG Dawkins), stating either (a) that plaintiff consents to dismissal of 07 Civ. 08059, or (b) reasons why the 1/31/08 dismissal motion ought not to be granted. At the end of the April 8 conference, Mr. Hofelich stated that he would get to this right away.

I also set two deadlines applicable to 06 Civ. 13697 and to 07 Civ. 08059, and to 08 Civ. 02193:

1. All fact discovery must be commenced in time to be completed by **August 30, 2008**. AAG Dawkins contemplates taking one deposition of Mr. Hofelich, to cover all three of these cases (and, if possible, 07 Civ. 05663(LTS)(FM)). Mr. Hofelich is adamant that such deposition should not involve moving him out of Elmira. I have requested AAG Dawkins to explore the possibility of taking the deposition by video conference; if the parties are unable to reach agreement on the deposition location, it is possible that I will be required to make a ruling on this.

2. Any dispositive motions must be addressed to Judge Castel, and must be served and filed by **September 30, 2008**.



DOUGLAS F. EATON  
United States Magistrate Judge  
500 Pearl Street, Room 1360  
New York, New York 10007  
Telephone: (212) 805-6175  
Fax: (212) 805-6181fax

Dated: New York, New York  
April 8, 2008

Copies of this Memorandum and Order are being mailed to:

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Hon. P. Kevin Castel